IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 1357 of 2001
(Old No. 1932/1987)

State of U.P. .....Appellant

Vs.

Gopal Datt s/o Sri Kheema Nand
R/o Village Malli Nairi, Patwari Circle Neoli
District Almora ...Respondent

Learned A.G.A. for the appellant.
Smt. Seema Sirohi, Advocate for the respondent.

Dated: November 21, 2007

Hon'ble B. C. Kandpal, J.

This appeal has been preferred against the judgment and order dated 27.4.1987 passed by Assistant Sessions Judge, Almora, in Sessions Trial No. 25 of 1985, thereby acquitting the accused/respondent of the charges punishable under Sections 376 and 392 of I.P.C.

Briefly stated the prosecution case is that on 13.8.1983, Smt. Basanti Devi, wife of Mohan Singh (first informant) was returning to her home after collecting grass from the jungle. On the way within the jungle of village Pokhari (at a distance about 1 Km. from the Motor Road), the accused Gopal Datt caught hold Smt. Basanti Devi and made indecent gestures towards her. She raised alarm and tried to escape. But no one came to his rescue. The accused again caught hold of Smt. Basanti Devi and on her resistance gave her severe beatings. Then the accused Gopal Datt laid Smt. Basanti Devi on the ground and committed rape on her. The accused

also robbed her of Guloband and 'Kili'. Smt. Basanti Devi became semi-unconscious. After some time she was able to go to her home and narrated the entire occurrence to her husband, Sri Mohan Singh, who went to the Headquarter of Patwari but the Patwari was not available there. On 14.8.83, he took Smt. Basanti Devi to Almora City and got her admitted in the District Hospital, Almora for treatment and medical examination.

On the basis of F.I.R. (Ex. A –1), Check F.I.R. was drawn on 14.8.1983 at 7.00 p.m. which is (Ex. A-2) on record. The case was investigated by Sri Devendra Prasad Pandey, Supervisor Kanoongo (PW-5) who recorded the statements of witnesses under section 161 of Cr.P.C., took Dhoti and Petticote and blouse (Ex. 1 to 3) of Smt. Basanti Devi in to his custody and prepared memo (Ex. A-3). He arrested the accused Gopal Datt on 15.8.1983 and took his underwear (Ex. 4) in to his custody and prepared memo (Ex. A-5) and got him medically examined. He also prepared the site plan of the occurrence (Ex. A-6) and submitted charge sheet (Ex. A-7) against the accused Gopal Datt. Thereafter, the accused was summoned and charges under Section 376/392 were framed against the accused to which he pleaded not guilty.

The prosecution in support of its case examined Sri Mohan Singh (PW-1), Smt. Lacchima Devi(PW-2), Smt. Basanti Devi (PW-3), Sri Damodar (PW-4), Sri D.P. Pandey (PW-5), Dr. Smt. S. Kohali (PW-6) and Sri R.D. Pant, Pharmasist (PW-7).

PW-1 Mohan Singh, husband of Smt. Basanti Devi, stated that the name of his wife was Basanti Devi. Their marriage took place 7-8 years ago. The occurrence has taken place 2½ years ago. His wife went in Chhatrani jungle for collecting the grass in the morning at about 6-7 a.m. accompanied by his aunt Lacchima Devi, wife of Ramesh Chandra and other women. In those days they had a child aged about 1½ year. His wife returned his house weeping at about 12-12½ p.m. and blood was coming out from her nose. There was abrasion over one side of the cheek and mark of teeth over other side of cheek. He asked her wife why she was weeping and who had beaten her, then she told her that while she was returning from Deena Jhol after collecting the grass, the accused Gopal Datt s/o Kheemanand pounced upon her. Gopal Datt pressed her breast and snatched her 'Darati' and scattered her grass. When she began to weep, he shut her mouth. When she became helpless he committed forcible rape upon her after denuding and rubbing her. She also told him that accused Gopal Datt snatched her nose ring and Guloband weighing about 2½ Tole. This witness also alleged that accused confessed his guilt before Sabhapati that he committed wrong with Basanti Devi. Thereafter, this witness sent Ramesh Chand and Ummed Singh to Patwari to tell about the incident, but Patwari was not there. Thereafter, both went to Patwari of Agartola, but he was also not too. He went to Almora on 13th of 1983 and again told that he went to Almora on 14th of 1983 accompanied by her wife Basanti Devi, Jagat Singh (Sabhapati), Govind Ballabh, Ummed Singh and Ramesh Chand. First of all, he went to hospital with his wife for her medical

examination. Thereafter, he got the F.I.R. registered by Ramesh Chand s/o Bhawani Datt on the saying of his wife. Witness was read over the original F.I.R. Paper No. 4Ka/2 and he proved his signature on it.

The accused in his statement denied the prosecution case and claimed that he has been falsely implicated in this case.

The learned Sessions Judge after hearing the counsel for the parties and assessing the evidence on record found not guilty the accused/respondent and acquitted of the charges levelled against him.

Feeling aggrieved, the State has come up in Appeal before this Court.

I have heard learned counsel for the parties and have gone through the record.

In this case, the prosecutrix Smt. Basanti Devi was medically examined by Dr. S. Kohli and prepared her report Ext. Ka-8. The doctor has specifically mentioned in her report that no injury was seen in perineum outside the vagina but later on the lady doctor has manipulated this report and added that there was abraded contusion of reddish colour over pubic region and also contusion around the perineum. The two opinion given by the lady doctors are contradictory each other. The learned trial court has rightly not believed a medical report. Further vaginal smear was taken and sent for pathological examination to ascertain the presence of spermatozoa. The prosecution has not tried to

prove or tender this pathological report in evidence before the trial court.

The statement of prosecutrix also does not inspire confidence. Her statement has not been corroborated by the statements of other prosecution witnesses. The trial court has discussed the evidence adduced in the case in detail and has come to the conclusion that the prosecution has failed to bring home the guilt against the accused beyond all reasonable doubts. The conclusion arrived at by the trial court does not suffer from any infirmity and illegality. I do not find any ground to interfere in the conclusion of the trial court.

The appeal lacks merit and is liable to be dismissed.

Accordingly, the appeal is dismissed. The impugned judgment and order dated 27.4.1987 passed by Assistant Sessions Judge, Almora, in Sessions Trial No. 25 of 1985, is upheld.

(B. C. Kandpal, J.)

SP